(2)

No. 94-790

Supreme Court, U.S.
FILED
FEB 22 1995
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1994

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

ZIYA K. KORAY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

IRWIN ROCHMAN
ROCHMAN PLATZER FALLICK ROSMARIN & STERNHEIM
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New York, New York 10017
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Counsel for Respondent

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Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217
Counsel for Petitioners

PETITION FOR WRIT OF CERTIORARI FILED NOVEMBER 1, 1994
CERTIORARI GRANTED JANUARY 13, 1995

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
Docket Entries (U.S. District Court, M.D. Pa.)	1
Order Specifying Conditions of Release (U.S. District Court, D. Maryland)	8
Judgment of Conviction (U.S. District Court, D. Maryland)	16
Motion Under 28 U.S.C. 2241 For Habeas Corpus Relief (U.S. District Court, M.D. Pa.)	21
Exhibit A	25
Exhibit B	29
Exhibit C	31
Exhibit D	34
Order Granting Certiorari	36

U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
(SCRANTON)

Civil Docket for Case No.: 92-CV-1458

KORAY

v.

SIZER, ET AL.

DOCKET ENTRIES

DATE	PROCEEDINGS
10/15/92	PETITION FOR WRIT OF HABEAS CORPUS Receipt #: Amt: (1s)
10/15/92	MOTION by Ziya K. Koray for appointment of counsel (1s)
10/15/92	MOTION by Ziya K. Koray to proceed in forma pauperis (1s)
10/15/92	Prisoner letter issued as to Ziya K. Koray with Notice and Consent Form (1s)
10/15/92	Remark case file to Prose Law Clk copy dkt sheet to Judge Kosik (1s)
10/23/93	ORDER by Judge Edwin M. Kosik that: 1) Motion for appointment of counsel is denied [2-1] (cc: Koray) (kn)
10/23/92	Doc 4 to Prose Law Clerk. (kn)
10/23/92	ORDER by Judge Edwin M. Kosik that: 1) Petitioner is granted temporary leave to proceed ifp; 2) W/in 10 days of the date of this order, the warden or other appropriate official shall complete the attached affdt form and provide the requested info to the court; 3) Warden shall provide a copy of the completed affdt to the petitioner. (cc: Koray, Warden at FPC Allenwood) (kn)

DATE	PROCEEDINGS
10/23/92	Doc 5 to Prose Law Clerk (kn)
11/4/92	Affidavit of Ziya K. Korry regarding order [5-1] to provide fin info of prisoner with present bal of 85.53 and average monthly $127.07 (1s)
11/4/92	Remark doc 6 to Prose Law Clark (1s)
11/5/92	MOTION by Ziya K. Koray for appointment of counsel (1s)
11/5/92	Remark doc 7 to Prose Law Clerk (1s)
11/10/92	ORDER by Judge Edwin M. Kosik prisoner to pay partial filing fee of $5.00 or send written explanation demonstrating his lack of accessibility. (cc: pltf) (1s)
11/10/92	Remark doc 8 to Prose Law Clerk (1s)
11/10/92	ORDER by Judge Edwin M. Kosik denying motion for appointment of counsel [7-1] (cc: all counsel) (1s)
11/10/92	Remark doc 9 to Prose Law Clerk (1s)
11/12/92	Letter to court from F.C. Sizer with prisoner fin acct info (1s) [Entry date 11/16/92]
11/16/92	Remark doc 10 to Prose Law Clerk (1s)
12/14/92	Receipt from pltf for $5.00 per 11/10/92 order. (rm) [Entry date 12/18/92]
12/17/92	Request by Ziya K. Koray for status of filing fee (1s) [Entry date 12/18/92]
12/18/92	Remark doc 11 to Prose law Clerk (1s)
12/22/92	Remark doc 29 to basement (1s)
12/22/92	ORDER TO SHOW CAUSE: by Judge Edwin M. Kosik 1. The Clerk of Ct is directed to serve a copy of petn on the respondents and US Atty. 2. Respondts within 20 days of dte of this order shall respond. (cc: petnr, US Atty, Atty Gen) by cert mail (1s)

DATE	PROCEEDINGS
12/28/92	RETURN OF SERVICE upon respondent Frank Sizer no date of signature on green card (1s) [Entry date 12/30/92]
12/30/92	Remark doc 14 to Prose Law Clerk (1s)
1/5/93	RETURN OF SERVICE executed upon respondent USBP 12/29/92 (1s)
1/5/93	RETURN OF SERVICE executed upon respondent Atty Gen of US 12/28/92 (1s)
1/5/93	Remark doc 15 to Prose Law Clerk (1s)
1/11/93	Response by respondents and C of S (1s)
1/11/93	Remark do 16 to Prose Law clerk (1s)
2/2/93	In response to the Government Motion (Traverse) by petitioner Ziya K. Koray to response [16-1] (bs)
2/2/93	Remark doc. 17 to Prose law clerk on 2/2/93. (bs)
4/30/93	ORDER by Judge Edwin M. Kosik Case terminated 1. The petn for a writ of h/c is denied. 2. the Clerk of Ct is directed to close this file. 3. Any appeal from this decision will be deemed frivolous, not taken in good faith, and lacking probable cause. (cc: all counsel) orig in sec cc in file (1s)
5/4/93	Remark file to basement on 5/4/93. (bs)
5/17/93	Notice of appeal by petitioner Ziya K. Koray from District Court order filed 4/30/93 [18-2] (filing fee not paid, certified copies of notice of appeal, order being appealed, with info/ack letter to USCA. (cc: Koray, all counsel, J. Kosik) (kn) [Entry date 05/18/93]
5/25/93	Record on appeal transmitted to USCA consisting of docs 1-19 and 1 certif copy of docket, 1 uncertif copy of docket. (kn) [Edit date 05/25/93]

DATE	PROCEEDINGS
5/27/93	Notification by Circuit Court of Appellate Docket Number 93-7357 (ps)
5/27/93	Doc. #20 to file in back of room 423. (ps)
6/1/93	MOTION by petitioner to proceed in forma pauperis on appeal (1s) [Entry date 06/02/93]
6/2/93	Remark doc 21 to Kosik for approval (1s)
6/7/93	Acknowledgement Received fr Ct of Appeals for actual record on appeal. Recv'd on 5/27/93 (jw) [Entry date 06/08/93]
6/8/93	ORDER by Judge Edwin M. Kosik granting motion to proceed in forma pauperis on appeal [21-1] (cc: Koray) (bs) [Edit date 06/08/93]
6/8/93	Transmitted 1st supplemental record on appeal to USCA consisting of doc. 23. (bs)
6/8/93	Doc. #21 to file in back of rm. 423. (ps)
6/15/93	Acknowledgement Received fr Ct of Appeals for 1st supplemental on appeal. Recv'd on 6/10/93. (jw)
4/26/94	Certified copy of judgment from USCA judgment of the said District Ct entered 4/30/93, be and the same is hereby reversed and remanded to the District Ct for further proceedings consistent with the opinion of this Ct. The District Ct should conduct those proceedings with expedition, because the time that Ziya K. Koray must serve in prison will have expired if he is entitled to credit for the time he was confined in the Volunteers of America facility. The mandate shall issue forthwith. Costs taxed against appellee. All of the above in accordance with th opinion of this Ct. Cert as a true copy and issued in lieu of a formal mandate on 4/25/94 (Opinion attached) (1s)
4/26/94	Remark case file to Judge Kosik (1s)

DATE	PROCEEDINGS
4/28/94	Written status report by respondents. (rm)
4/28/94	26 TO PROSE LAW CLERK. (rm)
4/29/94	ORDER by Judge Edwin M. Kosik that: petitioner, Ziya K. Koray, is released from the custody of the Bureau of Prisons to the custody of the Immigration and Naturalization Service on its detainer for whatever deportation proceedings that agency determines to be appropriate; IT IS HEREBY FURTHER ORDERED that the Immigration and Naturalization Service, when it takes final action in Petitioner's case, will advise this Court so that, if necessary, further consideration of bail Ziya K. Koray can take place. (cc: Plntf, FPD, USA, Faxed to B of Prisons & INS) (kn) [Edit date 04/29/94]
5/2/94	ORDER by Judge Edwin M. Kosik the Federal Public Defender is appointed to represent the petnr Atty added for Ziya K. Koray (cc: Koray and FPD) (1s) [Entry date 05/04/94]
5/3/94	ORDER by Judge Edwin M. Kosik that Ziya K. Koray Reg. Number 37880-053 be released from the Federal Prison Camp at Allenwood on 5/4/94 at 6:00 am pending further order by this Ct, Ziya K. Koray shall comply with the following conditions: He shall report as directed to the USPQ in this district. He shall notify the ct, the Clerk of Ct his atty and the US Atty of any change in residence address; and He shall not leave the US without the approval of the Ct. (cc: cert copy USP, Deft, USM USPA) orig in sec cc in file (1s) [Entry date 05/04/94]
5/3/94	Supplemental status report by defts C of S (1s) [Entry date 05/06/94]
5/9/94	Letter to court from petitioner Ziya K. Koray requesting status of case. (bs) [Entry date 05/11/94]

DATE	PROCEEDINGS
5/23/94	INFORMATION SHEET ON POST DECISION MATTERS—fr Ct of Appeals. An order was filed on 5/20/94 extending the time for filing a petn for rehearing to 6/8/94. (jw)
6/13/94	INFO SHEET ON POST DECISION MATTERS that a petn. for rehearing on behalf of Appellees was filed on 6/8/94. (bs) [Entry date 06/14/94]
6/21/94	INFORMATION SHEET ON POST DECISION MATTERS—fr Ct of Appeals. An order was filed on 6/17/94 denying the petn for rehearing. (jw) [Entry date 06/22/94]
6/22/94	ORDER by Judge Edwin M. Kosik 1. The Clerk of Ct. shall close this file for statistical purposes. 2. The Ct will restore this case to the active dkt if and when additional proceedings are required in the district. 3. This order shall not prejudice the rights of the parties. Case terminated (cc: all cousel) orig in sec cc in file (1s) [Entry date 06/23/94]
6/23/94	Remark case file basement (1s)
7/1/94	Mail Returned addressed to Ziya K. Koray RE 6/22/94 order. (rm) [Entry date 07/07/94]
7/7/94	36 to prose law clerk. (rm)
7/14/94	Remark Doc #36 to Basement (jw)
10/26/94	NOTICE by petitioner of change of address to Farmingdale, NY: CC thereon (jb) [Entry date 10/31/94]
10/31/94	Remark: Doc #37 to FRUS (jb)
11/9/94	Notice from USCA a petition for writ of certiorari was filed on 11/1/94 in the Supreme Ct at S.C. No. 94-790. (1s) [Entry date 11/15/94]
11/15/94	Remark doc 38 to basement (1s)

DATE	PROCEEDINGS
1/23/95	INFO SHEET ON POST DECISION MATTERS from USCA that a petn. for writ of certiorari was granted on 1/13/95. (info copy Judge Kosik) (bs) [Entry date 01/24/95]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Case No. R-91-0188-R

UNITED STATES OF AMERICA

v.

ZIYA KAMIL KORAY

ORDER SPECIFYING CONDITIONS OF RELEASE

It is hereby ORDERED that the above-named defendant be released upon the following conditions:

(1) That the defendant shall not violate any federal, state or local law during the period of release.

(2) That the defendant shall notify the Magistrate or Court immediately upon any change of address.

(3) That the defendant shall appear at all proceedings as required at such places and times as may be required in the future.

(4) That if convicted, the defendant shall abide by any judgment entered in this matter and shall surrender for service of any sentence which may be imposed as directed or required and shall otherwise obey any order or direction that may be issued in connection with the judgment or sentence of the Court.

(5) That the defendant shall next appear at (if blank, to be notified)

Honorable Norman P. Ramsey

Place

U.S. Courthouse, Balto., MD

9/6/91 @ 9:30 am

Date and Time

Part I—Release on Personal Recognizance or Unsecured Bond

It is FURTHER ORDERED that the defendant be released provided that:

(X) (6) The defendant promises to appear at all scheduled proceedings as required and to surrender for service of any sentence which may be imposed.

( ) (7) The defendant shall execute an unsecured appearance bond binding the defendant to pay the United States the sum of ———— dollars ($————) in the event of a failure to appear as required or to surrender as directed for service of any sentence which may be imposed.

Part II—Other or Additional Conditions of Release

The Court having determined that release by the above conditions will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community, it is hereby FURTHER ORDERED that the defendant be released on the additional condition(s) marked below:

(✓) (8) The defendant is placed in the custody of

Name of person or organization: Pretrial Services Agency —PSO Skidmore

Address: 101 W. Lombard Street, Room 101

City and State: Baltimore, MD 21201

(Tele. No.): 962-4820

who agrees (a) to supervise the defendant in accordance with all conditions of release, (b) to use every effort to assure the appearance of the defendant at all required Court proceedings before the United States Magistrate or Court, and (c) to notify the Magistrate or Court im-

mediately in the event the defendant violates any condition of release or disappears.

SIGNED: _____ SIGNED: _____
Custodian Custodian

(✓) (9) The defendant shall report to the Pretrial Services Agency at least two time(s) each week and otherwise report as that agency may direct.

(✓) (10) The defendant shall satisfactorily participate in any program of rehabilitation as may be directed or required by the Pretrial Services Agency to include, but not limited to the following: evaluation, urinalysis and/or treatment for substance abuse.

( ) (11) The defendant shall maintain or actively seek employment.

( ) (12) The defendant shall maintain or commence and satisfactorily participate in an educational program of the following types: _____

(✓) (13) The defendant shall refrain from the possession of any firearm, destructive device or any other dangerous weapon.

(✓) (14) The defendant shall refrain from the excessive use of alcohol.

(✓) (15) The defendant shall refrain from any use or unlawful possession of a narcotic drug or other controlled substance as defined in 21 USC 802 unless same is prescribed by a licensed medical practitioner.

( ) (16) The defendant shall undergo medical and/or psychiatric treatment and remain in the following institution if required for said treatment _____

_____

(X) (17) The defendant shall abide by the following restrictions on his or her personal associations, place of

abode, or travel: The defendant shall not leave the state of Maryland without first obtaining permission of the Court except as may be otherwise permitted by this Order

---

( ) (18) The defendant shall not without Court Order enter the following premises: ———————

( ) (19) The defendant shall not change his or her address without the permission of the Court.

(✓) (20) The defendant shall reside at the following halfway house type facility: Volunteers of America, 4601 E. Monument Street, Balto. MD 21205 (276-5880) and shall satisfactorily comply with all rules and regulations required or residents of the facility, and shall not change his or her address without the permission of the Court.

( ) (21) the defendant shall observe a curfew by physically being present on the premises of his residence or other required place of abode between the hours of —— and —— each day.

( ) (22) The defendant may be released for employment, schooling or the following limited purposes ——— —— during the hours of ——— and ——— each day (excluding Saturdays, Sundays and legal holidays) and shall return to and remain in custody during all other hours.

( ) (23) The defendant shall avoid all contact directly or indirectly with the following named individuals who may be considered alleged victims or potential witnesses except in the direct physical presence of his/her attorney in connection with the preparation of the defense ———

( ) (24) The defendant shall execute an agreement to forfeit the sum of ——— dollars ($———) and/or the following designated property: ———————

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upon failing to appear as scheduled by the Court or otherwise as required by this Order.

( ) (25) The defendant shall post with the Court the following indicia of ownership of the property designated above ———————————————— and/or ———% of the sum referred to above.

( ) (26) The defendant shall execute a bail bond with solvent sureties in the amount of ———————— dollars ($————————).

( ) (27) The defendant shall execute an appearance bond in the amount of ———————————— dollars ($————————) to be either fully or partially secured by the following individuals ———————— ———————— who shall execute the bond as sureties on behalf of the defendant, a deposit of cash in the amount of ———————— dollars ($————————) and/or other security approved by the Court, any cash deposit to be returned upon the Court's determination that the defendant has appeared as required.

( ) (28) The defendant shall surrender his or her passport to the Court to be held in the registry of the Court until the conclusion of the proceedings against the defendant.

( ) (29) The defendant shall obtain no passport during the pendency of the proceedings.

(✓) (30) Other additional conditions of release not specified above: Defendant shall be confined to premises of VOA and shall not be authorized to leave for any reason unless accompanied by Special Agent Dennis Bass.

Part III—Penalties, Forfeitures and Sanctions

1. *Failure to Appear.*

(a) A person commits an offense, if after having been released, he knowingly fails to appear before a Court as

required by conditions of release, or he knowingly fails to surrender for service of sentence pursuant to Court Order. If the defendant was released in connection with a charge, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction, for (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, the defendant shall be fined not more than $250,000.00 or imprisoned for not more than ten years, or both; (2) an offense punishable by imprisonment for a term of five or more years, but less than fifteen years, the defendant shall be fined not more than $250,000.00 or imprisoned for not more than five years, or both; (3) any other felony, the defendant shall be fined not more than $250,000.00 or imprisoned for not more than two years, or both; or (4) a misdemeanor, the defendant shall be fined not more than $100,000.00 or imprisoned for not more than a year, or both. Any term of imprisonment imposed shall be consecutive to the sentence of imprisonment for any other offense.

(b) If a person fails to appear before a Court as required, any person executing an appearance bond or a bail bond or executing an agreement to forfeit certain designated property, including money, upon the defendant's failure to appear as required, may suffer the forfeiture of said appearance or bail bond in the total amount of said bond as well as the forfeiture of any sum of money or property so designated to the United States.

2. *Offenses Committed While on Release.*

A person convicted of an offense committed while released shall be sentenced in addition to the sentence prescribed for the offense committed while on release to: (1) a term of imprisonment of not less than two years and not more than ten years if the offense is a felony; or (2) a term of imprisonment of not less than ninety days

and not more than one year if the offense is a misdemeanor. Any term of imprisonment shall be consecutive to any other sentence of imprisonment.

3. *Other Available Sanctions for Violation of Conditions of Release.*

A person who has been released and who had violated a condition of his release is subject to: (1) the immediate issuance of a warrant for the individual's arrest; (2) revocation of the individual's release; (3) an order for the individual's detention; and/or (4) subsequent prosecution for contempt of Court under 18 USC § 401, and if found to be in contempt may be fined, imprisoned or both.

4. *Obstruction of Justice.*

As a condition of release, the defendant has been directed not to commit any federal, state or local crime during the period of release. In this connection, the defendant's attention is directed to the following: (1) 18 USC § 1503—relating to the intimidation of witnesses, jurors and officers of the Court. Penalty—a fine of not more than $250,000.00 or imprisonment of not more than five years or both; (2) 18 USC § 1510—relating to obstruction of criminal investigations. Penalty—a fine of not more than $250,000.00 or imprisonment for not more than five years or both; (3) 18 USC § 1512—relating to tampering with a witness, victim or informant. Penalty—a fine of not more than $250,000.00 or imprisonment of not more than ten years or both or, if charged as a misdemeanor, a fine of not more than $250,000.00 or imprisonment of not more than one year or both; (4) 18 USC § 1513—relating to retaliating against a witness, victim or informant. Penalty—a fine of not more than $250,000.00 or imprisonment for not more than ten years or both.

Part IV—Acknowledgment by Defendant

I fully understand the methods and conditions of my release which have been set forth on this Order and the penalties, forfeitures and sanctions which are applicable in the event I violate any condition of release or fail to appear as required. I agree to comply with the terms of this Order and acknowledge receiving a copy of same. I promise to obey all conditions of release, to appear as required and to surrender for service of any sentence which may be imposed.

/s/ Ziya Koray

Defendant

c/o Volunteers of America, 4601 E. Monument Street

Address

Baltimore, MD 21205 276-5880

City & State Tele. No.

RELEASE ORDERED:

Date: 6/25/91

Location: Baltimore MD

/s/ Paul M. Rosenberg

United States Magistrate Judge

[Entered Oct. 25, 1991]

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Case Number: R-91-0188

UNITED STATES OF AMERICA

v.

ZAYA KEMAL KORAY

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

THE DEFENDANT:

☒ pleaded guilty to count 1.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:1956(a)(1)	Attempting to conduct financial transaction in or affecting interstate commerce involving the proceeds of specified unlawful activity.		

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ Count(s) ———— (is) (are) dismissed on the motion of the United States.

☒ It is ordered that the defendant shall pay a special assessment of $50.00, for count(s) 1, which shall be due ☒ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully-paid.

Defendant's Soc. Sec. No.: 077-74-5721

Defendant's Date of Birth: 5/26/57

Defendant's Mailing Address:

Volunteers of America
4601 E. Monument St.
Baltimore, Md. 21205

Defendant's Residence Address:

_____

_____

October 22, 1991
Date of Imposition of Sentence

/s/ Norman P. Ramsey
Signature of Judicial Officer

NORMAN P. RAMSEY
U.S. DISTRICT JUDGE
Name & Title of Judicial Officer

October 25, 1991
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 41 months.

☒ The court makes the following recommendations to the Bureau of Prisons: Defendant should be incarcerated in Danberry or Allenwood institutions.

☒ The defendant shall surrender to the United States marshall for this district,

☒ at 10:00 a.m. on November 25, 1991.

RETURN

I have executed this judgment as follows:

_____

_____

Defendant VOLUNTARILY SURRENDERED on 11-25-91 to ALLENWOOD FEDERAL PRISON CAMP at MONTGOMERY, PA. 17752, with a certified copy of this judgment.

COPY OF THE J&C WAS MAILED ON 11-26-91

PATRICK T. CASEY
Warden

By /s/ [Illegible]
Legal Tech.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall not possess a firearm or destructive device.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

[Filed Oct. 15, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

No. 3: CV-92 1458

ZIYA K. KORAY

v.

FRANK SIZER, WARDEN, ALLENWOOD FEDERAL PRISON CAMP; UNITED STATES BUREAU OF PRISONS; ATTORNEY GENERAL OF THE UNITED STATES

MOTION UNDER 28 U.S.C. § 2241 FOR HABEAS CORPUS RELIEF

Comes now the Petitioner, Ziya K. Koray, and requests this Honorable Court to grant habeas corpus relief under 28 U.S.C. § 2241 and to direct the United States Bureau of Prisons to credit Petitioner's sentence with the time that he served confined to the Volunteers of America halfway house in pre-trial and post-sentence confinement. As grounds for this motion, Petitioner states the following:

1) Petitioner is currently confined at the Allenwood Federal Prison Camp in Montgomery, Pennsylvania serving a federal sentence for money laundering in violation of 18 U.S.C. § 1956(a)(1). Petitioner has no further sentence to serve after completion of this federal sentence.

2) On June 18, 1991, Petitioner entered a plea of guilty to a one count criminal information charging him with attempting to conduct financial transactions in or affecting interstate commerce involving the proceeds of specified unlawful activity, in violation of 18 U.S.C.

§ 1956(a)(1). Petitioner was sentenced to forty-one months imprisonment on October 22, 1991.

3) Michael CitaraManis, Assistant Federal Public Defender for the District of Maryland, 100 S. Charles Street, Baltimore, Maryland 21201 represented Petitioner at his initial appearance. Warren Brown, Suite 909 Court Square Building, 200 E. Lexington Street, Baltimore, Maryland 21202 represented Petitioner at all subsequent proceedings in the district court.

3) Following his sentence, Petitioner filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit. This appeal, however, was voluntarily dismissed on May 5, 1992. Denise Benvenga, Assistant Federal Public Defender for the District of Maryland, 100 S. Charles Street, Suite 401, Baltimore, Maryland 21201 represented Petitioner on appeal.

4) Petitioner has not filed any other petitions or motions in federal court with respect to the judgment entered in this case.

5) On December 27, 1991, Petitioner requested the United States Bureau of Prisons to correct his sentence com[p]utation sheet to reflect time spent at the Volunteers of America halfway house.[1] That request was denied on January 10, 1992. Exhibit A.

6) On January 28, 1992, Petitioner filed a Request for Administrative Remedy. That request was denied on February 13, 1992. Exhibit B.

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[1] On June 25, 1991, Petitioner was released under the Bail Reform Act of 1984 upon condition that he remain at the Volunteers of America, a halfway house. Petitioner remained at the halfway house until November 22, 1991, when he reported to Allenwood FCP to serve his sentence. While at the halfway house, Petitioner was required to remain there twenty-four hours a day and did not have work-release status. He was permitted to leave only by order of court to attend to specific medical needs. Petitioner had to abide by all of the facilities rules and regulations.

7) Petitioner then filed a Regional Administrative Remedy Appeal which was denied on April 3, 1992. Exhibit C.

8) Petitioner's final administrative appeal, made to National Inmate Appeals of the Federal Bureau of Prisons, was denied on June 1, 1992. Exhibit D.

9) Petitioner is entitled to credit against his sentence for the time that he served at the Volunteers of America because that time was spent in "official detention" under 18 U.S.C. § 3585. Several courts have rejected the Bureau of Prisons interpretation of "official detention" as time spent under a detention order and have ordered the Bureau of Prisons to credit inmates with time served in community confinement. *Mills v. Taylor*, 967 F.2d 1397 (9th Cir. 1992); *United States v. Davis*, 763 F. Supp. 638 (D.D.C. 1991); *Brown v. Rison*, 895 F.2d 533 (9th Cir. 1990). This court, in *United States v. Fernandez*, No. 89-234-33 (July 16, 1990) (1990WL102803), held that a defendant ordered to remain at a community correction center pre-trial must be given credit for that time. The court reasoned that the level of confinement associated with the center amounted to "official detention." Moreover, the court found that to deny the defendant credit for the time spent at the community treatment center while granting credit for those who have commenced their sentence would deny the defendant equal protection of the laws.

10) The amount of restrictions placed on Petitioner's liberty at the Volunteers of America halfway house were fundamentally no different than the restrictions placed against the defendants in the above-mentioned cases.

Accordingly, Petitioner requests that this Court order the Federal Bureau of Prisons to credit Petitioner for his time spent at the Volunteers of America.

WHEREFORE, Petitioner prays that the Court grant him all relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct, Executed on 09-27-1992.

(date)

/s/ Ziya Koray

(Signature of Petitioner)

EXHIBIT A TO MOTION
FOR HABEAS CORPUS RELIEF

DATE December 27, 1991

Ms. Opal Schlappi, Records Supervisor

(Name and title of officer)

SUBJECT: State completely but briefly the problem on which you desire assistance, and what you think should be done (Give details).

My com[p]utation sheet does not reflect post and pre-trial time spent in the Volunters of America(CCC) in Baltimore, Maryland. The computation sheet gives me credit from 4/23/91 to 6/25/91, which is time spent in county conefinement at Rockville, Md. I was then transferred to the CCC in Baltimore, Md; from 6/25/91 to 10/22/91. I was sentenced on 10/22/81 and returned to the CCC until 11/22/91.

I would appreciate a corrected computation sheet. Thank You.

NAME: Ziya Kemal Koray No.: 37880-053

Work assignment: Unicor Unit: B

NOTE: If you follow instructions in preparing your request, it can be disposed of more promptly and intelligently. You will be interviewed, if necessary, in order to satisfactorily handle your request. Your failure to specifically state your problem may result in no action being taken.

DISPOSITION: (Do not write in this space)

DATE 01-10-92

We contacted Pre-trial services and based on the information we received, your stay at VOA in Baltimore was a

condition of release via Personal Recognizance or Unsecured Bond, and under those conditions, you are not entitled to credit for the period of time you were under the supervision of the Pre-trial services.

We will contact Ms. Skidmore, Pre-Trial Services to determine the status of your case after having been sentenced—were you continued on bond with the same conditions—this is the question we must have answered. Thank you.

01-13-92—We again contacted Ms. Skidmore and [she] advised that you were returned to the CCC after sentencing under the same conditions as when you were initially placed in the CCC—there are no provisions to give credit for this time. Thank you.

/s/ Opal Schlappi
Officer

/s/ Opal Schlappi
1-13-92

ALY 1330.8—Attachment 1
July 22, 1991

INFORMAL ATTEMPT TO RESOLVE PROBLEM

Procedures for application of Program Statement 1330.7, "Administrative Remedy", indicates an attempt to informally resolve a problem should be made prior to the submission of a BP-9.

This is the preferred course of action intended to minimize time and effort on the part of both staff and inmate and to maintain the effectiveness of the program.

Effective November 12, 1979, any Allenwood inmate submitting a BP-9 must state in writing the attempts made at an informal resolution by answering the questions below:

1. *Name of Inmate and Registration Number:*

   KORAY, Ziya 37880-053 B5

2. *Nature of Complaint (State briefly what the problem is.):*

   My computation sheet does not reflect past and pretrial time spent in the Volunteers of America (CCC) in Baltimore, MD. It gives me credit from 04-23-91 to 06-25-91, which is time spent in county confinements in MD. I was then transferred to the CCC in Baltimore, and stayed there from 06-25-91 to 10-22-91. I was sentenced on 10-22-91 and returned to the CCC again until 11-22-91.

3. *Efforts Made to Resolve the Problem (Include contacts with staff (by name), use of request slips, etc.):*

   I filed inmate request form to Ms. Opal Schlappi (Records Supervisor) on December 27, 1991.

4. *Counselor's Comments (Include efforts made to resolve informally):*

   I spoke with the Records Dept on 1/23/92 and they stated that you are not Eligible for credit during these

time and they Explained that to you in a cap-out Response date 1/13/92 (See attached I have also attached Page 3 of [Program] Statement 5880[.]24 For Your Review

/s/ M. Fetzer
Correctional Counselor's
Signature

1/28/92
Date of Response

EXHIBIT B TO MOTION FOR HABEAS CORPUS RELIEF

U.S. Department of Justice

Federal Bureau of Prisons

Request For Administrative Remedy

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Koray, Ziya K.
Last Name, First Middle Initial

37880-053
Reg. No.

B5
Unit

FPC Allenwood
Institution

Part A—INMATE REQUEST

My computation sheet does not reflect past and pre-trial time spent in the Volunteers of America (CCC) in Baltimore, MD. It gives me credit from 04.23.1991 to 06.25.1991, which is time spent in county confinements in MD. I was then transferred to the CCC in Baltimore, and stayed there from 06.25.1991 to 10.22.91. I was sentenced on 10.22.91 and returned to the CCC again until 11.22.91. I didn't even receive credit for the time spent in CCC after the sentencing. I would appreciate a corrected computation sheet. Thank you.

/s/ Ziya Koray

Date

Signature of Requester

Part B—RESPONSE

You have asked that your computation sheet reflect post and pretrial time spent in the Volunteers of America (Community Corrections Center) in Baltimore, Maryland.

In accordance with established procedures provided within Program Statement 5880.24, *Sentence Computation, Jail Time Credit Under 18 USC 3568*, "Time spent in residence in a *residential community center* (or a community based program located in a Metropolitan Correctional Center or jail) under the provisions of 18 USC 3146 as a condition of bail or bond, including the "Pretrial Services" program (18 USC 3152-3154), is not creditable as jail time since the degree of restraint provided by residence in a community center is not sufficient restraint to constitute custody within the meaning or intent of 18 USC 3568. Also, a "highly restrictive" condition of bail or bond, such as requiring the defendant to report daily to the U.S. Marshal, is not considered as time in custody. However, time spent in a *jail-type facility* (not including a community based program located in a Metropolitan Correctional Center or jail) as a condition of bail or bond is creditable as jail time because of the greater degree of restraint."

Accordingly, your appeal is denied.

/s/ Patrick T. Casey

February 13, 1992 — PATRICK T. CASEY, Warden

DATE — Warden or Regional Director

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 25031-F1

Part C—RECEIPT

Return to: _____

CASE NUMBER: 25031-F1

EXHIBIT C TO MOTION FOR HABEAS CORPUS RELIEF

U.S. Department of Justice

Federal Bureau of Prisons

Regional Administrative Remedy Appeal

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-DIR-9 including any attachments must be submitted with this appeal.

From: Koray, Ziya K.
Last Name, First, Middle Initial

37880-053
Reg. No.

B5
Unit

Allenwood
Institution

Part A—REASON FOR APPEAL

My computation sheet does not reflect past and pre-trial time spent in the Volunteers of America (CCC) in Baltimore, Maryland. It gives me credit from 04.23.1991 to 06.25.1991, which is the time spent in county confinements in Maryland. I was then transferred to the CCC in Baltimore and stayed there from 06.25.1991 to 10,22.1991. I was sentenced on 10.22.1991 and returned to the CCC again until 11.22.1991. I was not allow to leave the C.C.C. without Court Order, and I did not release for employment and schooling. I didn't even receive a credit for the time spent in the C.C.C. after the

sentencing. I would appreciate, if you would reconsider my request. Thank you in advance.

02.03.1992	/s/ Ziya Koray
DATE	SIGNATURE OF REQUESTOR

Part B—RESPONSE

In your Administrative Remedy, you request that your sentence be credited with time spent at the Volunteers of America (VOA) Community Corrections Center. Specifically, you request that from June 25, 1991, to October 22, 1991, time spent on release at VOA, be credited to your sentence.

You were arrested by federal agents on April 23, 1991, for attempting to conduct a financial transaction in or affecting commerce involving proceeds of an unlawful activity and detained. On June 25, 1991, you were released from detention by the U.S. Magistrates pursuant to 18 U.S.C. 3141 and 3142. The release specified certain conditions that you reside at VOA under U.S. Pretrial Service supervision.

Title 18 U.S.C. 3585 and Operations Memorandum 261-91 (5883), *Credit for Time In Custody Under 18 U.S.C. 3585(b)*, states that credit toward the service of a sentence will be awarded for time spent in official detention prior to the date the sentence starts.

Your sentence has been credited with time spent in detention from April 23, 1991, to June 25, 1991, when you were released from detention. The time from June 26, 1991, to October 22, 1991, at VOA on a condition of release was not spent in official detention. Your sentence began on November 25, 1991, when you surrendered to the Bureau of Prisons, FPC Allenwood, for the service of your sentence. Your sentence has been correctly computed.

Accordingly, your appeal is denied. If dissatisfied with this response, you may appeal to the General Counsel, Federal Bureau of Prisons. Your appeal must be received in the Administrative Remedies Branch, Federal Bureau of Prisons, 320 First Street NW, Washington, DC 20534, within 30 calendar days of the date of this response.

G. C. Wilkinson
G. C. WILKINSON
Regional Director

Date 4-3-92

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 25031-R1

Part C—RECEIPT

CASE NUMBER: 25031-R1

EXHIBIT D TO MOTION FOR HABEAS CORPUS RELIEF

ADMIN. REM. 25031-A1

You request prior custody credit from June 25, 1991 through November 24, 1991 for time spent in a Community Treatment Center as a condition of bond.

On April 23, 1991, you were arrested and remanded to custody where you remained until your release on bond on June 25, 1991. The U.S. District Court for the District of Maryland sentenced you to a term of 41 months imprisonment on October 22, 1991. At the time of sentencing, the court allowed you to remain on bond until November 25, 1991, at which time you surrendered to FPC Allenwood, Pennsylvania for service of your 41-month sentence.

Title 18 USC § 3141—3143 allows the court to prescribe restrictions on persons released to the community on bond, to reasonably assure the appearance of the person as required by the court. The conditions placed on you by the court while you were released from detention on bond are not the same as conditions placed on a defendant who remains in official detention. Official detention is defined as time spent under a detention order. This also includes time spent under a *detention order* when the court has recommended placement in a less secure environment. A defendant under these circumstances remains in "official detention", subject to the discretion of the U.S. Attorney General and the U.S. Marshals Service with respect to the place of detention. Those defendants placed in a program and residence as a condition of detention are subject to removal and return to a more secure environment at the discretion of the U.S. Attorney General and the U.S. Marshals Service, and further, remain subject to prosecution for escape for any unauthorized absences from the program or residence.

You were not similarly situated with those placed in a program or residence as a *condition of detention,* as you were *released* from detention on bond with a condition for residence at a community treatment center. Time spent in residence as a condition of bond is *not* creditable as prior custody credit. To grant credit for time *released* from detention on bond, would be contrary to the intent of Title 18 USC § 3585(b), regardless of the conditions placed on you as a result of the bond. Your request is denied.

DATE 6-1-92

/s/ for Robert J. [Illegible]
J. M. RALPH
Administrator
National Inmate Appeals

SUPREME COURT OF THE UNITED STATES

No. 94-790

JANET RENO, Attorney General, ET AL., PETITIONERS

v.

ZIYA K. KORAY

ORDER ALLOWING CERTIORARI

Filed: January 13, 1995

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 23, 1995. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, March 23, 1995. Rule 29.2 does not apply.

January 13, 1995

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